

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

- (1) ethylene/propylene copolymers; and
- (2) ethylene/propylene/non-conjugated diolefin terpolymers.

Applicants provisionally elect, with traverse, Group 2 (Claims 1, 2, and 4-16) in view of the following arguments:

Restriction is only proper if the claims of the restricted Group are independent or patentably distinct, and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction (M.P.E.P. § 803). Moreover, when making a lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (i.e., why there is no single inventive concept) specifically describing the unique special technical feature in each group (M.P.E.P. § 1893.03(d)). Applicants respectfully traverse the restriction requirement on the group that the Examiner has not carried the burden of providing any reasons and/or examples to support conclusions that the claims of the restricted groups are patentably distinct, or providing any reasons and/or examples to support any conclusions that the Groups lack unity of invention.

The Examiner asserts that Groups 1 and 2 do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding special technical feature.

The Examiner, however, has not considered that the claims in each group are considered to have unity of invention under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while PCT Rule 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides, in relevant part that a national stage application

containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to a product, and the use of said product.

In chemical cases, a specified group of material which do not necessarily belong to an otherwise class can be claimed together employing "Markush" language. The accepted expression of the Markush grouping is "selected from." The Markush practice sanctions the claiming together operable substances which could not be defined by generic language. In the instant application while ethylene/propylene copolymers, and ethylene/propylene/non-conjugated diolefin terpolymers may behave chemically and physically different, they are usually illustrated in the same chapters of technical handbooks and encyclopedias, and are considered variants of the same class of products, but with regards to the process of the application they behave essentially in the same manner. The common characteristics and utility in a generic sense suffices for proper Markush grouping. It is a technical relationship that involves the same features, and it is this technical feature that defines the contribution which each of the groups taken as a whole make over the prior art.

Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction requirement should be required when the International Preliminary Examination Report did not, restriction is believed to be improper.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants request that if the invention of Group 2 is found allowable, withdrawn Group 1 which includes the limitation of the allowable claims be rejoined. M.P.E.P. § 831.04.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

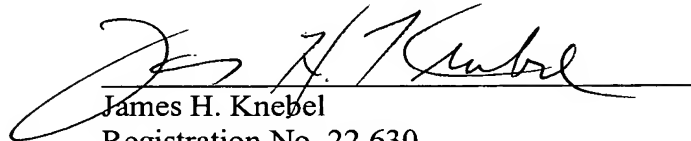
Respectfully submitted,

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